

October 28, 2002

Ms. Ann Harris, Director  
We the People, Inc., of Tennessee  
341 Swing Loop  
Rockwood, TN 37854

Dear Ms. Harris:

Your letter of September 26, 2002, to the Chairman and other Commissioners regarding the Commission's approval of the Tennessee Valley Authority (TVA) request for license amendments related to tritium production has been referred to me for response. Your letter identifies a number of concerns with respect to the licensing action, the licensing process itself, and the conduct of a former NRC attorney.

Your first assertion is that, during the recent consolidated tritium license amendment proceeding for the Watts Bar and Sequoyah facilities, the decision of the Atomic Safety and Licensing Board (Licensing Board) not to hold a prehearing conference denied your organization the opportunity to amend its contentions. Further, after noting that the NRC did not issue its environmental assessment until after the Licensing Board ruled on the intervention petitions, you also stated that you did not have knowledge of "differing conclusions" or "significant data raised or stated by the NRC that was different from TVA's document," presumably TVA's environmental report.

The Licensing Board's decision not to hold a prehearing conference was a matter within its discretion in accordance with the Commission's Rules of Practice, and did not deprive your organization of an ability to present admissible contentions. In the Licensing Board's Memorandum and Order dated February 7, 2002, the Board ordered each petitioner to file contentions by March 7, 2002, as a supplement to the petitioner's initial intervention filing. Had the Licensing Board in fact scheduled a prehearing conference, there still would have been a date certain for the filing of contentions, *i.e.*, fifteen days prior to the holding of the prehearing conference, pursuant to 10 C.F.R. § 2.714(b)(1). In either case, petitioners were afforded an appropriate opportunity to present contentions; the regulations do not require that an opportunity to amend contentions be separately provided.

Your assertions regarding "differing conclusions or significant data raised or stated by the NRC that was different from TVA's document," likewise do not support your view that you were denied a meaningful opportunity to participate. While the staff's Environmental Assessments were issued subsequent to the Licensing Board's ruling on your petition, the applicant's initial environmental report, upon which the staff's EA was based, was available and should have been relied upon to provide the basis for any contention you believed was supported. If a subsequent staff document reflected a difference, it might have provided the basis for an amended or late-filed contention. In this instance, however, we are aware of no difference between the applicant's environmental report as ultimately updated, and the staff's Environmental Assessments.

You also state that the NRC is “forgiving” safety issues raised in your contentions, specifically involving a station blackout and hydrogen igniters, which were also raised when Watts Bar was licensed. In addition, you state that the issue of the reliability of diesel generators during a station blackout “went by the wayside” and ice condenser “problems” were summarily removed. The granting of the tritium license amendments did not “forgive” any generic safety issues such as those you have cited. Although the amendments requested by TVA were approved, the issues of hydrogen combustion in an ice condenser plant during station blackout conditions and a severe accident continue to be the subject of ongoing study by the NRC. As you mentioned, the Advisory Committee on Reactor Safeguards has previously met to consider certain safety issues and plans to meet later this year to further consider such issues. Thus, the approval of the tritium license amendments did not make the safety issues with which you are concerned “disappear,” as you suggested in your letter. Nonetheless, resolution of those matters does not affect the determination made with respect to approval of the tritium license amendments.

You also assert that the NRC lacked statutory authority to issue the tritium license amendments. The Office of the General Counsel does not share your view. We believe that the Commission’s actions related to this matter have been authorized by law and that passage of the National Defense Authorization Act for Fiscal Year 2000, Pub. L. No. 106-65, § 3134(a), 113 Stat. 512, 927 (1999), the most recent relevant enactment by Congress, made it clear that Congress intended for the NRC to entertain the tritium license amendments. Moreover, the Licensing Board, in ruling on your intervention petition, addressed the statutory provisions that could be cited to support your position, such as 42 U.S.C. § 7272, and reached the same conclusion. *Tennessee Valley Authority* (Sequoyah Nuclear Plants, Units 1 & 2; Watts Bar Nuclear Plant, Unit 1), Memorandum and Order (Ruling on Intervention Petitions), LBP-02-14, Slip op. at 29-30 (July 2, 2002). I am aware that the U.S. General Accounting Office suggested in a January 2000 report the need for additional clarifying legislation, but that recommendation fell far short of suggesting some infirmity in NRC’s authority to act on the license amendments or expend funds for that purpose. We have received no suggestion from our congressional oversight or appropriations committees that our actions have been beyond our authority.

Your letter poses a number of questions regarding the employment of a former NRC staff attorney by the law firm of Winston & Strawn, which represents TVA in the tritium license amendment proceeding. The clear tenor of your questions is that this attorney and the law firm have violated ethical constraints or otherwise acted improperly in this matter. There is no basis for such a conclusion.

All NRC employees are subject to certain ethical requirements as a condition of their employment and are subject to disciplinary action or potentially other sanctions for violating those requirements. Allegations that an NRC employee has violated any ethics law or regulation may be investigated by the NRC’s Office of the Inspector General. Attorneys and their firms are also bound by the rules of professional conduct imposed by the states in which they practice. The General Counsel of the agency serves as the NRC’s Designated Agency Ethics Official and has designated experienced attorneys with extensive knowledge of the ethics laws and regulations to serve as Ethics Counselors to train and advise agency staff. Our office maintains contact with the Office of Government Ethics, which sets government-wide standards of conduct, assists agencies in resolution of ethics issues, and periodically audits agency ethics programs. As do all NRC employees, the former NRC attorney received the government-wide regulations on standards of conduct, which include the rules on seeking

employment, when he began service in the Office of the General Counsel. He also received verbal training on the major Federal ethics laws and regulations, including the rules on seeking employment and complied with the ethics rules on seeking employment.

As you would expect, attorneys in our office may leave the NRC for personal or professional reasons and continue the practice of law for, among others, private corporations or law firms. The NRC, consistent with legal requirements, has always required that NRC attorneys, as well as other NRC employees, disqualify themselves from working on any particular matter that will have a direct and predictable effect on the financial interests of anyone else with whom they are negotiating or have any arrangement for future employment. There have been no violations of these requirements by NRC attorneys, including the one hired by Winston & Strawn.

The attorney was employed in the NRC Office of the General Counsel from September 3, 2000, to August 19, 2002. I am informed that this attorney began negotiating for employment with Winston & Strawn in April of 2002, and, on July 1, 2002, agreed to accept a position with the firm. His only involvement with respect to the tritium issue was to draft part of the NRC answer to a request for hearing and leave to intervene that was filed by Blue Ridge Environmental Defense League and Jeannine Honicker. The NRC answer was filed on January 31, 2002, at least two months before the attorney began negotiations with Winston & Strawn. He did not personally participate in any matter involving the tritium issue after the NRC answer noted above was filed on January 31, 2002.

I should also note that the attorney sought guidance from an NRC Ethics Counselor in July 2002 on his proposed employment with Winston & Strawn. He informed the Ethics Counselor that he was not at the time involved in any case or other matter affecting Winston & Strawn. The Ethics Counselor advised the staff attorney not to work on any assignment that would affect Winston & Strawn's financial interests until he formally terminated NRC service. We have not seen any documents from Winston & Strawn or the attorney which would suggest that he failed to comply with the ethics rules. In fact, in a letter from Winston & Strawn, dated August 29, 2002, -- of which you received a copy -- the firm's Conflicts Partner informed the NRC that this individual will be appropriately screened from any involvement with respect to the subject of this license amendment proceeding.

Finally, you assert that the Department of Energy has “lied” to the NRC and other government officials regarding its actions in reaching the Department’s policy decision to contract with commercial nuclear power reactor licensees for the Department’s tritium needs. The NRC has no basis for concluding that the Department of Energy has lied to the NRC on any matter material to our licensing decision. Your assertions are best addressed to the Department of Energy or its Inspector General.

Sincerely,

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Stephen G. Burns  
Deputy General Counsel

cc: Anne E. Thar, Esq.

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Sincerely,

Stephen G. Burns  
Deputy General Counsel

cc: Anne E. Thar, Esq.

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